

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION**

CYRUS PIERCE

* **CIVIL ACTION NO. 09-1512
SEC. P**

VERSUS

* **JUDGE ROBERT G. JAMES**

SHERIFF STEVEN MAY, ET AL.

* **MAG. JUDGE KAREN L. HAYES**

SUPPLEMENTAL REPORT AND RECOMMENDATION

On March 16, 2010, the undersigned recommended that the instant civil rights complaint filed by plaintiff *pro se*, Cyrus Pierce, be dismissed pursuant to Federal Rule of Civil Procedure 41(b) for failure to comply with a court order. (Mar. 16, 2010, Report and Recommendation [doc. #6]).

The undersigned further finds that to the extent the applicable statute of limitations may bar plaintiff from re-filing the instant suit, then dismissal at this juncture effectively will constitute dismissal “with prejudice,” – “an extreme sanction that deprives the litigant of the opportunity to pursue his claim.” *Berry v. CIGNA/RSI-CIGNA*, 975 F.2d 1188, 1190 (5th Cir. 1992) (internal quotations omitted). Dismissal with prejudice for failure to prosecute or to comply with a court order is warranted only where “a clear record of delay or contumacious conduct by the plaintiff exists and a lesser sanction would not better serve the interests of justice.” *See Millan v. USAA General Indem. Co.*, 546 F.3d 321, 325 (5th Cir. 2008) (citations and internal quotation marks omitted). In addition, the Fifth Circuit generally requires the presence of at least one of three aggravating factors: “(1) delay caused by [the] plaintiff himself

and not his attorney; (2) actual prejudice to the defendant; or (3) delay caused by intentional conduct.” *Id.*

The undersigned finds that the requirements for a dismissal with prejudice are satisfied in this case. As discussed above, plaintiff has ignored a court order. Furthermore, plaintiff is proceeding in forma pauperis and has been released from custody not too long ago. Therefore, it is unlikely that he enjoys sufficient means to fund a lesser, monetary sanction. Moreover, dismissal of the case may be the least sanction where, as here, there is every indication that plaintiff no longer wishes to pursue his cause of action. Finally, plaintiff’s unrepentant flaunting of court orders¹ reflects his own contumaciousness or “stubborn resistance to authority”² which is personally attributable to him as a pro se litigant.

For the foregoing reasons,

IT IS RECOMMENDED that plaintiff’s Civil Rights Complaint be **DISMISSED** in accordance with the provisions of FRCP Rule 41(b).

Under the provisions of 28 U.S.C. Section 636(b)(1)(C) and Rule 72(b), parties aggrieved by this recommendation have fourteen (14) days from service of this report and recommendation to file specific, written objections with the Clerk of Court. A party may respond to another party’s objections within fourteen (14) days after being served with a copy of any objections or response to the district judge at the time of filing.

Failure to file written objections to the proposed factual findings and/or the

¹ This report and recommendation itself provides plaintiff with further notice of his non-compliance.

² See *Millan, supra.*

proposed legal conclusions reflected in this Report and Recommendation within fourteen (14) days following the date of its service, or within the time frame authorized by Fed.R.Civ.P. 6(b), shall bar an aggrieved party from attacking either the factual findings or the legal conclusions accepted by the District Court, except upon grounds of plain error.

See, Douglass v. United Services Automobile Association, 79 F.3d 1415 (5th Cir. 1996).

THUS DONE AND SIGNED at Monroe, Louisiana, this 18th day March 2010.



KAREN L. HAYES
U. S. MAGISTRATE JUDGE